

Signed

TEMPORARY RIGHT OF WAY AGREEMENT

Parcel # 146107000016
DRAFT 3.1.2023
Version 2

STATE OF COLORADO)
)
COUNTY OF WELD)

This Temporary Right of Way Agreement (the "Agreement") is entered into on this 2nd day of March, 2023, by and between **Sakata Farms Inc., ("Grantor")**, whose mailing address is PO Box 508, Brighton, Colorado 80601 and **Asphalt Specialties Company, Inc., a Colorado corporation, ("Grantee")**, having a mailing address of 10100 Dallas Street, Henderson, Colorado 80640, collectively referred to herein as "**Parties**".

In consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant unto Grantee a non-exclusive temporary right of way for grading, graveling, dust control, expanding, and using a dirt road for ingress and egress to adjacent properties across a strip of land forty feet (40') in width (the "**Right of Way**"), further depicted on Exhibit "A" attached hereto and made a part hereof, and located adjacent to and west of US Hwy 85 in part of:

Township 1 North, Range 66 West, 6th P.M.
Section 7: SE/4
Weld County, Colorado

This Agreement is made subject to the following terms and conditions:

1. Grantee shall pay Grantor [REDACTED] per year (each an "**Annual Payment**") for a ten (10) year term ("**Term**") The first Annual Payment shall be made within 30 days after Grantee has both (a) obtained all required Government Authorizations described in Paragraph 2 below, and (b) the earlier of (i) commencement of mining operations by Grantee on adjacent properties for which this Right of Way is needed, or (ii) construction of the roadway on the Right of Way by Grantee ("**Anniversary Date**"). Each subsequent Annual Payment shall be made on each annual Anniversary Date during the term of this Agreement. This Agreement shall terminate upon failure to timely pay the Annual Payment for the subsequent year or at the expiration of the Term ("**Expiration Date**"). Should Grantee timely pay each Annual Payment for the duration of the Term, Grantee may extend the Term for an additional five (5) year term ("**Extension Term**") under the same conditions, except that the Annual Payment for the Extension Term shall be [REDACTED] and

notice of an intent to extend shall be given in writing at least sixty (60) days prior to the Expiration Date. The Extension Term shall terminate upon failure to timely pay for any subsequent Extension Term year or at the expiration of the five year Extension Term.

2. Grantor acknowledges that Grantee must first obtain certain approvals for zoning, permits, and other authorizations from federal, state and local governments of private entities, prior to starting aggregate operations on properties adjacent to the Right of Way and using the Right of Way ("Government Authorizations"). Grantor agrees to cooperate with Grantee in applying for, obtaining and maintaining such Government Authorizations as they pertain to the Right of Way, but this shall not be construed to financially obligate Grantor for the expenses associated with obtaining the Government Authorizations, which expenses shall be borne solely by Grantee. Grantee shall ensure all Government Authorizations remain valid for the duration of the Right of Way.
3. Grantee agrees not to construct anything within the Right of Way, except that Grantee shall construct a four-wire barbed fence along the western boundary of the Right of Way to contain livestock and may expand, grade, and/or gravel the existing dirt road and take such other actions necessary to control dust, ensure its safe, adequate and prudent use for travel by trucks. Grantee shall be solely responsible for maintaining the dirt road within the Right of Way.
4. Grantee shall extend all culverts running under US Hwy 85 as they currently exist or as they are constructed so as to avoid interfering with the supply of irrigation water or drainage of water.
5. Grantee's use of the Right of Way shall not interfere with Grantor's access to its adjoining property or the delivery or removal of irrigation water from that property. If Grantee's use of the Right of Way interferes with the delivery or removal of irrigation water from Grantor's adjacent property or unreasonably limits Grantor's access to its property, Grantee shall immediately remove whatever obstructions have been placed upon the property by Grantee to ensure the efficient access to the property by Grantor and the delivery and removal of irrigation water. If Grantee, its employees, invitees or licensees damage any of the culverts or other infrastructure that currently exist or are constructed within or adjoining the Right of Way, Grantee shall immediately notify Grantor of any such damage and repair or replace the damaged culvert or other infrastructure. Grantee shall be liable for any damage to Grantor's crops as a result of damage to Grantor's culverts or other infrastructure.
6. Grantor agrees not to construct anything within the Right of Way that could interfere with Grantee's rights granted hereunder, and Grantee agrees not to impede Grantor's use of the Right of Way unless such use interferes with Grantee's rights granted hereunder.

7. Grantee has no rights to use Grantor's property outside of the Right of Way and use of the Right of Way shall be limited to those uses specifically identified herein.
Construction within the Right of Way for the fence and other uses identified herein shall occur only during normal business hours.
8. Grantee agrees to comply with all applicable federal, state, and local laws, regulations, orders and rules related to the use of the Right of Way and the exercise of Grantee's rights hereunder.
9. Grantee agrees to protect, indemnify, and hold harmless Grantor from any claims, demands, expenses, losses, damages, attorneys fees and costs, or injuries (including death) to persons or property to the extent caused by Grantee or Grantee's employees, and/or authorized agents, affiliates, or any other third party working on behalf of Grantee (collectively, "**Grantee's Representatives**") in connection with Grantee's or Grantee's Representatives' use of the Right of Way, and specifically to protect, indemnify, and hold harmless Grantor from any failure of Grantee or Grantee's Representative to obtain requisite permits or any use by Grantee that violates federal, state, or local regulation, order, rule, or law irrespective of whether such use is permitted herein.
10. Grantee shall have the right to discharge or redeem for Grantor, in whole or in part, any mortgage, tax or other lien that covers, in whole or in part, the Right of Way and shall be subrogated to such lien and rights.
11. This Agreement and privileges granted in this Agreement are assignable in whole or in part by Grantee only upon written consent from Grantor, which shall not be unreasonably withheld and may be withheld if the proposed assignee cannot demonstrate and verify the ability to adhere to the terms of this Agreement.
12. All notices required under this Agreement must be in writing and must be delivered to the above addresses, in order to be effective unless changed by either party through prior written notice to the other. All payments made to Grantor pursuant to this Agreement will be made by check, payable to Grantor at the above address. This payment arrangement may be modified by Grantor upon written notice to Grantee at least sixty days prior to the due date of the next payment.
13. Prior to entry upon the Right of Way, Grantee shall deposit ten thousand dollars (\$10,000.00) as escrow ("Escrow Payment") with a mutually agreed upon escrow agent, to be held for the duration of this agreement, including the Extension Term if applicable. The Escrow Payment shall be returned to Grantee upon remediation of the

Right of Way within sixty (60) days of the expiration of this agreement as contemplated in Section 1 to substantially the same condition as it existed prior to Grantee's entry thereon, or in Grantor's sole discretion. Should Grantee fail to remediate the Right of Way to substantially the same condition as it existed prior to Grantee's entry thereon within sixty (60) days of expiration of this agreement, the entirety of the Escrow Payment shall be released to Grantor.

14. The Right of Way is granted **AS IS WHERE IS**, with no representation or warranties made by Grantor related thereto. Grantee is solely responsible for identifying and complying with any existing easements or other burdens within the Right of Way.

If any provision or any portion of any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable by reason of any law or public policy, such provision or portion thereof will be considered to be deleted, and the remainder of this Agreement will constitute the agreement between Grantor and Grantee covering the subject matter hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this agreement is entered into as of the day and year first written above and executed in at least two original copies with one copy to the Grantor and one copy to the Grantee.

GRANTOR: Sakata Farms Inc.

By: Robert Sakata
Robert Sakata

Title: President

GRANTEE: Asphalt Specialties Co., Inc.

Daniel W. Hunt

Asphalt Specialties Company, Inc.

By: Daniel W. Hunt

Title: President

ACKNOWLEDGEMENTS

STATE OF COLORADO)

COUNTY OF Adams)

SHARON K NISHIMOTO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20074026026
MY COMMISSION EXPIRES JULY 13, 2023

The foregoing instrument was acknowledged before me this 2nd day of March, 2023, by Robert Sakata, as President for Sakata Land, Co.

Sakata Farms Inc.

WITNESS my hand and Notaries Seal.

Sharon K Nishimoto
Notary Public in and for said State and County

MY COMMISSION EXPIRES: July 13, 2023

STATE OF COLORADO)

COUNTY OF Adams)

The foregoing instrument was acknowledged before me this 2nd day of March, 2023, by Daniel W. Hunt, as **President for Asphalt Specialties Company, Inc.**, a Colorado corporation, and being authorized to do so, on behalf of said company.

WITNESS my hand and Official Seal.

Paula E. Maes
Notary Public in and for said State and County

MY COMMISSION EXPIRES: December 31, 2025

PAULA E. MAES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014037092
MY COMMISSION EXPIRES DEC.30, 2025

Handwritten signature

Exhibit "A"

Attached to and made a part of this Right of Way Agreement dated the 2nd day of March, 2022 by and between the Sakata Land, Co, as Grantor and Asphalt Specialties Company, Inc. as Grantee. *Sakata Farms Inc.*

